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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, JULY 24, 2002

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. INS-2002-00187

Ex Parte: In the matter of
Adopting Revisions to the Rules
Governing Surplus Lines Insurance

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia provides that the Commission shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction, and § 38.2-223 of the Code of Virginia provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code of Virginia.

The rules and regulations issued by the Commission pursuant to § 38.2-223 of the Code of Virginia are set forth in Title 14 of the Virginia Administrative Code.

The Bureau of Insurance has submitted to the Commission proposed revisions to Chapter 350 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Surplus Lines Insurance," which amend the rules at 14 VAC 5-350-20, 14 VAC 5-350-30, 14 VAC 5-350-150, 14 VAC 5-350-160, and 14 VAC 5-350-210, repeal the rules at 14 VAC 5-350-40 through 14 VAC 5-350-80, 14 VAC 5-350-110 through 14 VAC 5-350-140, 14 VAC 5-350-170,

and 14 VAC 5-350-180, propose new rules at 14 VAC 5-350-85, 14 VAC 5-350-95, 14 VAC 5-350-155, and 14 VAC 5-350-165, and delete Form SLB-1, Part 1, Form SLB-1, Part 2, and Form SLB-2.

The proposed revisions reflect the relocation of the surplus lines broker licensing sections from Chapter 48 (§ 38.2-4801 et seq.) of Title 38.2 of the Code of Virginia to Article 5.1 (§ 38.2-1857.1 et seq.) of Chapter 18 of Title 38.2 of the Code of Virginia due to the passage of Senate Bill 913 by the General Assembly during its 2001 Session, which is effective September 1, 2002.

In addition, it is proposed that certain sections unrelated to Senate Bill 913 be relocated, which requires the applicable current sections to be repealed and replaced with new sections.

There also are proposed nonsubstantive and "clean up" revisions to various sections.

The Commission is of the opinion that the proposed revisions submitted by the Bureau of Insurance should be considered for adoption with an effective date of September 1, 2002.

IT IS THEREFORE ORDERED THAT:

(1) The proposed revisions to the "Rules Governing Surplus Lines Insurance," which amend the rules at 14 VAC 5-350-20, 14 VAC 5-350-30, 14 VAC 5-350-150, 14 VAC 5-350-160, and 14 VAC 5-350-210, repeal the rules at 14 VAC 5-350-40 through 14 VAC 5-350-80, 14 VAC 5-350-110 through 14 VAC 5-350-140, 14 VAC 5-350-170, and 14 VAC 5-350-180, propose new rules at 14 VAC 5-350-85, 14 VAC 5-350-95, 14 VAC 5-350-155, and 14 VAC 5-350-165, and

delete Form SLB-1, Part 1, Form SLB-1, Part 2, and Form SLB-2, be attached hereto and made a part hereof.

(2) All interested persons who desire to comment in support of or in opposition to, or to request a hearing to oppose the adoption of, the proposed revisions shall file such comments or hearing request on or before August 27, 2002, in writing with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218 and shall refer to Case No. INS-2002-00187.

(3) If no written request for a hearing on the proposed revisions is filed on or before August 27, 2002, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposed revisions, may adopt the revisions proposed by the Bureau of Insurance.

(4) AN ATTESTED COPY hereof, together with a copy of the proposed revisions, shall be sent by the Clerk of the Commission to the Bureau of Insurance in care of Administrative Manager Brian P. Gaudiose, who forthwith shall give further notice of the proposed adoption of the revisions to the rules by mailing a copy of this Order, together with the proposed revisions, to all surplus lines brokers licensed by the Commission and certain interested parties designated by the Bureau of Insurance.

(5) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the proposed revisions, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(6) On or before July 31, 2002, the Commission's Division of Information Resources shall make available this Order and the attached proposed revisions on the Commission's website, <http://www.state.va.us/scc/caseinfo/orders.htm>.

(7) The Bureau of Insurance shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of paragraph (4) above.

State Corporation Commission
Bureau of Insurance

CHAPTER 350.

RULES GOVERNING SURPLUS LINES INSURANCE.

14 VAC 5-350-20. Applicability.

This chapter applies to all ~~persons procuring~~ individuals and business entities that sell, solicit or negotiate surplus lines insurance coverage on risks resident, located or to be performed in Virginia, to all surplus lines policies issued for delivery in Virginia, and to any other evidence of surplus lines insurance coverage issued for delivery in Virginia.

14 VAC 5-350-30. Definitions.

As used in this chapter:

"Admitted insurer" means an insurer licensed by the Commission to do an insurance business in this Commonwealth.

"Authorized to write the insurance coverage sought" means that the admitted insurer is licensed for that class of insurance in this Commonwealth and has complied with the applicable provisions of Title 38.2 of the Code of Virginia concerning the filing of rules, rates and policy forms providing the insurance coverage sought, unless such insurance coverage has been exempted from filing by Commission order.

"Business entity" means a partnership, limited partnership,

limited liability company, corporation, or other legal entity other than a sole proprietorship.

"Class of insurance" means the classes enumerated in §§ 38.2-109 through 38.2-121 and §§ 38.2-124 through 38.2-134 of the Code of Virginia.

"Commercial insured" means an insured (i) who ~~procures~~ solicits or negotiates the insurance of any risk or risks by use of the services of a full-time employee acting as an insurance manager or buyer, (ii) whose aggregate annual premiums for insurance on all risks total at least \$75,000, or (iii) who has at least 25 full-time employees.

"Diligent effort" means:

1. For business that is originated by a surplus lines broker, a good faith search for insurance among admitted insurers resulting in declinations of coverage by three unaffiliated admitted insurers licensed and authorized in this Commonwealth to write the insurance coverage sought, whether or not the surplus lines broker is an agent of any of the declining insurers; and

2. For business that is referred from a licensed property and casualty insurance agent, declinations or rejections of coverage by three insurers licensed in this Commonwealth to write the class of insurance, whether or not the surplus lines broker is an agent of any of the declining insurers.

"Eligible surplus lines insurer" means a non-admitted insurer approved by the Commission pursuant to subsection B of § 38.2-4811 of the Code of Virginia.

"Non-admitted insurer" means an insurer not licensed to do an insurance business in this Commonwealth. "Non-admitted insurer" includes insurance exchanges authorized under the laws of a state.

~~"Procure" means to bind or cause to be bound insurance coverage (orally or in writing) or to issue or cause to be issued an insurance policy, whichever comes first.~~

"Sell" means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurer.

"Solicit" or "negotiate" means the attempted selling or attempted placing of insurance or coverage, whether directly or indirectly, in this Commonwealth.

"Surplus lines broker" means ~~a person~~ an individual or business entity licensed under this chapter to procure insurance on risks resident, located or to be performed in this Commonwealth from eligible surplus lines insurers pursuant to Article 5.1 (§ 38.2-1857.1 et seq.) of Chapter 18 of Title 38.2 of the Code of Virginia and thereby authorized to engage in the activities set forth in Chapter 48 (§ 38.2-4800 et seq.) of Title 38.2 of the Code of Virginia.

"Surplus lines insurance" means any insurance in this

Commonwealth of risks resident, located or to be performed in this Commonwealth, permitted to be ~~procured~~ sold by or through a surplus lines broker from an eligible surplus lines insurer. Surplus lines insurance does not include reinsurance, insurance obtained directly from a non-admitted insurer by the insured upon his own life or property, life insurance, credit life, industrial life, variable life, annuities, variable annuities, credit accident and sickness, credit insurance, title insurance, contracts of insurance on vessels or craft, their cargo, freight, marine builder's risk, maritime protection and indemnity, ship repairer's legal liability, tower's liability or other risks commonly insured under ocean marine insurance, and insurance of the rolling stock and operating properties of railroads used in interstate commerce or of any liability or other risks incidental to the ownership, maintenance or operation of such railroads.

"Unaffiliated" means admitted insurers who are not part of a group of insurers under common ownership or control.

~~14 VAC 5-350-40. Surplus lines brokers; license required.~~

~~No person shall act as a surplus lines broker unless duly licensed by the Commission. No person may be licensed as a surplus lines broker unless the person is currently licensed as a property and casualty insurance agent in Virginia.~~

~~14 VAC 5-350-50. Application for surplus lines broker's license.~~

~~Any applicant for a new or renewal surplus lines broker's license shall file with the Commission an application on Form SLB-1. The applicant shall submit with the application the license fee required by § 38.2-4802 of the Code of Virginia.~~

~~14 VAC 5-350-60. Term of license.~~

~~Every license issued under this chapter shall expire on the fifteenth day of March next following its date of issuance. No such license shall be renewed unless the licensee files an application for renewal on Form SLB-1 with the fee required under s 38.2-4802 of the Code of Virginia. No such new or renewal license shall be issued unless the assessment prescribed by §§ 38.2-400 and 38.2-403 of the Code of Virginia, the taxes prescribed by § 38.2-4809 of the Code of Virginia, and any penalties imposed pursuant to Titles 38.2 or 58.1 of the Code of Virginia have been paid to the Commission.~~

~~14 VAC 5-350-70. Applicants to file bond with Commission.~~

~~The applicant shall file a surety bond with the commission on Form SLB-2 in the amount prescribed by § 38.2-4804 of the Code of Virginia prior to the issuance of a surplus lines~~

~~broker's license. The applicant shall file with the bond the appropriate acknowledgement of principal contained in Form SLB-2.~~

~~14 VAC 5-350-80. Suspension, revocation, and refusal of license.~~

~~The Commission may refuse to issue a surplus lines broker's license or may suspend or revoke the license of any surplus lines broker under § 38.2-1831 of the Code of Virginia for any one or more of the following reasons:~~

~~1. Failure to allow the Commission to examine the broker's records and accounts as required by this chapter and Chapter 48 (§ 38.2-4800 et seq.) of Title 38.2 of the Code of Virginia;~~

~~2. Failure to make and file quarterly reports as required by this chapter and Chapter 48;~~

~~3. Failure to make and file the annual report required by this chapter and Chapter 48;~~

~~4. Failure to pay when due the surplus lines premium tax, assessment, or penalty required by this chapter and Chapter 48;~~

~~5. Failure to meet the qualifications for issuance of a surplus lines broker's license required by this chapter and Chapter 48;~~

~~6. Violation of any provision of Chapter 48 or this chapter; or~~

~~7. Any other cause for which a property and casualty agent's license may be revoked, suspended, or refused.~~

14 VAC 5-350-85. Surplus lines brokers; license required.

The licensure of surplus lines brokers shall be governed by Article 5.1 (§ 38.2-1857.1 et seq.) of Chapter 18 of Title 38.2 of the Code of Virginia.

14 VAC 5-350-95. Notice to insured.

The licensed surplus lines broker shall provide the notice to the insured required under subsection B of § 38.2-4806 of the Code of Virginia as prescribed in Form SLB-9. The notice shall be given prior to the placement of the insurance; however, if coverage must be placed and become effective within 24 hours after referral of the business to the surplus lines broker, the notice may be given promptly following such placement. An additional copy of the notice shall be affixed to the policy by stamp, sticker, or other means on all policies procured pursuant to this chapter. When a property and casualty agent refers coverage to a surplus lines broker, it is the responsibility of the surplus lines broker to assure that this requirement is satisfied.

~~14 VAC 5-350-110. Changes requiring refiling of quarterly report.~~

~~If, after delivery of any policy or other written evidence of insurance, there is any change in the identity of the insurer(s), or in the proportion of the risk assumed by any insurer, or if there is any material change in coverage, the surplus lines broker shall promptly issue and deliver to the insured an appropriate substitute for, or endorsement of the original document, accurately showing the current status of the coverage and the insurers responsible thereunder. The quarterly report required under 14 VAC 5-350-150 of this chapter shall be refiled to reflect any changes listed in the preceding sentence. Such refiling may be accomplished by the filing of a copy of the original quarterly report with such changes noted thereon or attached thereto.~~

~~14 VAC 5-350-120. Notice to insured.~~

~~The licensed surplus lines broker shall provide the notice to the insured required under subsection B of § 38.2-4806 of the Code of Virginia as prescribed in Form SLB-9. The notice shall be given prior to the placement of the insurance; however, if coverage must be placed and become effective within 24 hours after referral of the business to the surplus~~

~~lines broker, the notice may be given promptly following such placement. An additional copy of the notice shall be affixed to the policy by stamp, sticker, or other means on all policies procured pursuant to this chapter. When a property and casualty agent refers coverage to a surplus lines broker, it is the responsibility of the surplus lines broker to assure that this requirement is satisfied.~~

~~14 VAC 5-350-130. Surplus lines brokers, referrals, compensation.~~

~~A surplus lines broker may not accept surplus lines business from any person other than an applicant for insurance or a licensed property and casualty insurance agent and the surplus lines broker may not compensate any person other than a licensed property and casualty insurance agent for such business. No person other than an applicant for insurance or a licensed property and casualty insurance agent shall place surplus lines business with a surplus lines broker licensed under this chapter and Chapter 48 (§ 38.2-4800 et seq.) of Title 38.2 of the Code of Virginia and no person other than a licensed property and casualty agent may accept compensation for such business. The surplus lines broker placing or procuring the insurance is responsible for compliance with the provisions of this chapter.~~

~~14 VAC 5-350-140. Records of surplus lines broker.~~

~~Each surplus lines broker shall keep in his office the records required by subsection A of § 38.2-4807 of the Code of Virginia. In addition, for each policy procured by him, the surplus lines broker shall make and keep a record of the rejections or declinations of coverage which include the name of the declining admitted insurer, the representative of the admitted insurer responsible for rejecting or declining the coverage sought, and the date the coverage was rejected or declined by the admitted insurer. The record of each policy, other than the records required by subsection A of § 38.2-4807, shall be made available for inspection by the Commission within 24 hours of a request therefor.~~

~~The records required by § 38.2-4807 of the Code of Virginia shall be subject to examination without notice by the Commission pursuant to § 38.2-1809 of the Code of Virginia and shall be available during normal business hours. Such records shall be retained for a period of not less than five years following termination of the policy.~~

~~14 VAC 5-350-150. Surplus lines broker to file quarterly report.~~

~~Every licensed surplus lines broker shall file with the~~

Commission a report on ~~Form~~ Forms SLB-3, SLB-5 (Parts 1-3), and SLB-7 for the business conducted during the previous calendar quarter. This report shall be filed with and received by the Commission not more than 30 days after the end of the calendar quarter in which any such insurance has been ~~procured~~ sold by the surplus lines broker. At the filing of the report, every licensed surplus lines broker shall remit to the Commission the gross premium tax due.

Surplus lines brokers licensed in this Commonwealth may not file the report and pay the tax or assessment on insurance contracts sold by unlicensed surplus lines brokers.

14 VAC 5-350-155. Changes requiring refiling of quarterly report.

If, after delivery of any policy or other written evidence of insurance, there is any change in the identity of the insurer or insurers, or in the proportion of the risk assumed by any insurer, or if there is any material change in coverage, the surplus lines broker shall promptly issue and deliver to the insured an appropriate substitute for, or endorsement of the original document, accurately showing the current status of the coverage and the insurer or insurers responsible thereunder. The quarterly report required under 14 VAC 5-350-150 shall be refiled to reflect any changes

listed in the preceding sentence. Such refiling may be accomplished by the filing of a copy of the original quarterly report with any such changes noted thereon or attached thereto.

14 VAC 5-350-160. Surplus lines broker to file annual report and remit outstanding premium tax and full amount of assessment due.

On or before the first day of March of each year every licensed surplus lines broker shall file with the Commission a report as required by § 38.2-4807 of the Code of Virginia on ~~Form~~ Forms SLB-4, SLB-6 (Parts 1-3), and SLB-8 for the business conducted during the previous calendar year. The report prescribed in this section shall be verified and notarized. In lieu of filing Form SLB-6 (Parts 1-3), a broker may file legible photocopies of the previously filed quarterly reports on Form SLB-5 (Parts 1-3) for the calendar year.

At the filing of the report, every licensed surplus lines broker shall remit to the Commission any outstanding gross premium tax and the full assessment due as calculated on Form SLB-8. Such remittance shall be made payable to the Treasurer of Virginia. If a payment is made in an amount later found to be in error and an additional amount is due, the Commission shall notify the surplus lines broker of the additional amount

due, and the surplus lines broker shall pay such amount within 14 days of the date of the notice.

14 VAC 5-350-165. Records of surplus lines broker.

Each surplus lines broker shall retain in his office all of his records relative to insurance transactions. In addition, for each policy sold by him, the surplus lines broker shall make and keep a record of the rejections or declinations of coverage which include the name of the declining admitted insurer, the representative of the admitted insurer responsible for rejecting or declining the coverage sought, and the date the coverage was rejected or declined by the admitted insurer. The records of each insurance transaction shall be made available for inspection and subject to examination without notice by the Commission during normal business hours. Such records shall be retained for a period of not less than five years following termination of the policy.

~~14 VAC 5-350-170. Surplus lines broker to file gross premium tax report and remit taxes and assessments due.~~

~~A. Every licensed surplus lines broker whose annual premium tax liability can reasonably be expected to exceed \$1,500 shall file with the Commission the quarterly gross premium tax~~

~~report on Form SLB-7 no later than 30 days after the end of each calendar quarter. Form SLB-7 shall be verified and notarized. The licensed surplus lines broker shall also file Form SLB-5 at the same time that Form SLB-7 is filed. Every licensed surplus lines broker shall remit to the Commission the full amount of gross premium tax due as calculated on Form SLB-7 when this report is filed. Such remittance shall be made payable to the Treasurer of Virginia.~~

~~B. On or before the first day of March of each year every surplus lines broker that was licensed for any portion of the preceding calendar year shall file with the Commission the gross premium tax and assessment report on Form SLB-8. The report prescribed in this section shall be verified and notarized. Enclosed with the SLB-8 report, every licensed surplus lines broker shall remit to the Commission the full amount of gross premium tax and assessment due as calculated on Form SLB-8. Such remittance shall be made payable to the Treasurer of Virginia.~~

~~C. If a payment is made in an amount later found to be in error, the Commission shall, if an additional amount is due, notify the surplus lines broker of the additional amount and the surplus lines broker shall pay such amount within 14 days of the date of the notice. Failure to pay the full amount of gross premium tax and assessment due on or before the first~~

~~day of March shall be punishable under §§ 38.2-4814, 38.2-403 or 58.1-2507 of the Code of Virginia. In addition, any person licensed or required to be licensed under this chapter who willfully fails or refuses to pay the full amount of the tax or assessment required by this chapter, either by himself or through his agents or employees, or who makes a false or fraudulent return with intent to evade the tax or assessment levied, or who makes a false or fraudulent claim for refund shall be guilty of a Class 1 misdemeanor. If any person licensed or required to be licensed under Chapter 48 (§ 38.2-4800 et seq.) of Title 38.2 of the Code of Virginia, charges and collects from the insured the taxes and assessments required by this chapter and Chapter 48, such person shall be a fiduciary to this Commonwealth for any taxes and assessments owed to this Commonwealth under this chapter and Chapter 48. If an overpayment is made, the surplus lines broker may petition the Commission for a refund of such overpayment pursuant to the provisions of § 58.1-2030 of the Code of Virginia.~~

~~14 VAC 5-350-180. Eligible surplus lines insurers.~~

~~A surplus lines broker shall not procure insurance from a non-admitted insurer unless that insurer has prior approval of the Commission to issue surplus lines insurance.~~

14 VAC 5-350-210. Penalties.

Any violation of this chapter shall be punished as provided for in § 38.2-4814 of the Code of Virginia and any other applicable law of this Commonwealth, except that any violation of subsection C of 14 VAC 5-350-90 ~~of this chapter~~ shall be punished as provided for in §§ 38.2-218, 38.2-1831, 38.2-1857.7, and 38.2-1857.8 of the Code of Virginia and any other applicable law of this Commonwealth.

FORMS

~~Form SLB-1, Individual Application for License for a Surplus Lines Broker, Part 1 (rev. 1/01).~~

~~Form SLB-1, Business Entity Application for License for a Surplus Lines Broker, Part 2 (rev. 1/01).~~

~~Form SLB-2, Bond for Surplus Lines Insurance Broker (rev. 1/01).~~

Form SLB-3, Quarterly Combined Affidavit by Surplus Lines Broker (rev. 9/99).

Form SLB-4, Annual Combined Affidavit by Surplus Lines Broker (rev. 9/99).

Form SLB-5, Surplus Lines Quarterly Report (rev. 9/99).

Form SLB-6, Surplus Lines Annual Report (rev. 9/99).

Form SLB-7, Quarterly Gross Premiums Tax Report (rev. 9/99).

Form SLB-8, Annual Gross Premiums Tax Report (rev. 9/99).

Form SLB-9, Notice to Insured (eff. 9/96).

Form SLB-10, Commercial Insured Waiver (eff. 9/96).